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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)
Plaintiff-Appellee,) Filed September 27, 1983 182
vs.)
EDDIE LEE WILSON,) 3-247 / 69183
Defendant-Appellant.)

Appeal from Pottawattamie District Court - Harold L. Martin, Senior Judge.

Defendant appeals from his conviction for burglary in the second degree in violation of Iowa Code section 713.1 and 713.3. AFFIRMED.

Linda Del Gallo, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General, and Steven M. Foritano, Assistant Attorney General, for plaintiff-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Schlegel, Hayden, and Sackett, JJ.

HAYDEN, J.

Defendant appeals his conviction for burglary in the second degree in violation of Iowa Code section 713.3 (1981) asserting that there was insufficient evidence to support the jury verdict. We affirm.

In the early morning hours of May 7, 1982, the Council Bluffs Police Department received a call indicating that there was suspicious activity at one of the motels in the area. Officer Higgins proceeded to the vicinity and watched the motel from a nearby gas station. A little while later, he received a second call stating that a trailer had been burglarized in the motel parking lot and giving a description of the truck that might be involved. Officer Higgins then observed a truck fitting the description pulling out of the parking lot with the defendant driving and Robert Irwin as a passenger. When the officer stopped the truck, he saw, in plain view, various items which were later identified as those stolen from the trailer. Defendant's responses to questions concerning how the items got in his truck were evasive, but defendant finally asserted that some of the stolen articles belonged to him.

Both defendant and Irwin testified that they were intoxicated and parked at the motel so that defendant could get some sleep before driving home. Irwin, who had already been convicted for his participation in the burglary, stated that he took the items from the trailer while the defendant was asleep without defendant's knowledge or participation. On cross-examination, Irwin admitted that he had been threatened by the boyfriend of defendant's sister regarding his testimony at trial.

Defendant asserts that there was insufficient evidence from which a jury could find that he took the items from the trailer or aided and abetted Irwin in the commission of the burglary. We do not agree.

Our review of a criminal case is on assigned error. However, if violations of basic constitutional safeguards are asserted, we make an independent evaluation

of the totality of the circumstances. State v. Cullison, 227 N.W.2d 126-27 (Iowa 1975). A jury verdict will be upheld on appeal unless there is not substantial evidence in the record to support it. Substantial evidence is evidence which could convince a rational trier of fact that the defendant is guilty beyond a reasonable doubt. We view the evidence in the light most favorable to the State and accept all legitimate inferences that can reasonably be drawn therefrom. State v. Schrier, 300 N.W.2d 305, 306 (Iowa 1981).

In order to convict the defendant on the theory that he aided and abetted the commission of the crime, the State must show that defendant knowingly participated in the act or gave encouragement to the other actors prior to its commission. Fryer v. State, 325 N.W.2d 400, 406 (Iowa 1982). Aiding and abetting need not be shown by direct proof; it may be inferred from circumstantial evidence. While defendant's presence at the scene is not enough, his presence coupled with other evidence of his conduct before and after perpetration of the offense is sufficient to support a conviction. Id.

Defendant presented evidence that he was so intoxicated that he pulled into the parking lot to sleep and was asleep at the time of the burglary. However, two police officers and one other witness, all of whom observed and spoke with defendant at the time of his arrest, testified that he was not intoxicated. There was evidence that defendant parked the truck as close as possible to the trailer in such a way that he blocked parked cars and obstructed a passageway despite the fact that there were plenty of empty parking spaces in the lot. Furthermore, when questioned about the stolen goods, defendant's responses were evasive. He later stated that he owned some of the property. Inconsistent statements of the accused are probative evidence from which a jury can infer guilt. State v. Schrier, 300 N.W.2d 305, 309 (Iowa 1981).

We find there is substantial evidence in this case to support the conclusion that defendant knowingly participated in the burglary.

AFFIRMED.